

### REMARKS

A review of the claims indicates that:

A) Claims 2—15, 17—27, 29—31, 33—41, 43, 44 and 46—49 remain in their original form.

B) Claims 1, 16, 28 and 42 are currently amended.

C) Claims 6, 32, 45 and 50—72 are currently cancelled.

In view of the following remarks, Applicant respectfully requests reconsideration of the rejected claims and withdrawal of the rejections.

#### 35 U.S.C. §102 Rejections

Claims 1—6, 8—19, 23—32, 35—51, 53—64 and 67—72 were rejected under §102(e) as being anticipated by U.S. Patent No. 6,556,542, hereinafter “Sudo.” In response, the Applicant submits that the Office has failed to establish a *prima facie* case of anticipation and, in view of the comments below, respectfully traverses the Office’s rejections.

#### Traversal of Rejection of Independent Claim 1

**Claim 1** recites a processor-readable medium comprising processor-executable instructions for:

- sending test data to a plurality of clients, **wherein sending the test data comprises instructions for varying an amount of test data sent to balance reliability and cost;**
- receiving a rate  $R_i$  which is based at least in part on a rate at which the test data was received by at least some of the plurality of clients; and
- calculating a rate  $R_0$  at which to send an image to the plurality of clients, wherein the rate  $R_0$  is a function of at least some of the  $R_i$ .

Claim 1 has been amended to recite the elements of Claim 6, which is now cancelled. Accordingly, Claim 1 assumes the same scope as original Claim 6, and

1 the Applicant will therefore address the rejection of Claim 6. However, the  
2 Applicant notes that Claims 1 and 6 were rejected in the same location (top 1/3 of  
3 Page 3 of the Office Action mailed 10/16/2007).

4 Claim 1 has been amended to recite, "wherein sending the test data  
5 comprises instructions for varying an amount of test data sent to balance reliability  
6 and cost", and Claim 6 has been cancelled. The Applicant respectfully submits  
7 that Sudo reference does not show or disclose any aspects of varying an amount of  
8 test data to balance cost and reliability.

9 First, Sudo does not show or disclose the use of test data. Sudo does  
10 disclose switching transmission speed (e.g. column 12, lines 54—56, wherein  
11 transmission speed is switched from "average" to "minimum". However, this  
12 does not appear to be in a test environment, and does not disclose the use of test  
13 data. The claim recites the use of test data, which is useful in setting the  
14 transmission rate  $R_0$ . Thus, the Applicant respectfully submits that Sudo does not  
15 show or disclose the use of test data in a method for setting a transmission rate  $R_0$ .

16 Second, Sudo does not show or disclose varying an amount of test data.  
17 The Sudo reference discloses that the "ER values" are calculated for receiving  
18 terminals and sent to the transmitter (see, e.g., column 5, lines 55—60). and Sudo  
19 discloses that the ER values may be varied (column 12, lines 53—57). However,  
20 Sudo does not disclose "varying an amount of test data". Accordingly, the  
21 Applicant respectfully submits that Sudo fails to support the rejection, and  
22 respectfully requests that the rejection be removed.

23 Third, Sudo does not show or disclose balancing reliability and cost. Sudo  
24 does disclose aspects of calculating transmission rates, including ER (column 5,  
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1 lines 59—60). However, the Applicant respectfully submits that Sudo does not  
2 mention balancing reliability with cost, particularly in a context of an amount of  
3 test data to be sent.

4 The Patent Office, in rejecting Claim 6, fails to point to any specific  
5 columns, passages and/or drawing figures as support for the Section 102 rejection  
6 of Claim 6 (now incorporated into Claim 1 by amendment). Without a more  
7 specific rejection, the Applicant will review the passages cited with respect to the  
8 rejections of Claims 1, 2, 6 and 8 at #6 on the top of page 3 of the OA mailed  
9 10/16/2007.

10 The ER values in Sudo represent “explicit cell rates” (column 5, lines 28—  
11 32). The ER calculation is a central part of Sudo’s disclosure (column 5, lines  
12 59—60). The transmitting terminal controls the transmission rate for transmitting  
13 cells to the receiving terminals based on the ER value assigned (column 5, lines  
14 4—9). In the event of a buffer overflow, the ER value can be used to slow the  
15 transmission rate (column 12, lines 53—56). For example, the minimum ER value  
16 can be used to allow all clients to receive data successfully (column 12, lines 63—  
17 68).

18 However, Sudo does not disclose, “sending the test data comprises  
19 instructions for varying an amount of test data sent to balance reliability and cost”.  
20 The Patent Office does not appear to point to any specific figure or text passage to  
21 support the rejection. The Applicant respectfully asks the Office to reconsider,  
22 and to allow Claim 1, as amended to recite the elements of, and assume the scope  
23 of, Claim 6.  
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1       **Claims 2—5 and 7—15** depend from Claim 1 and are allowable due to  
2 their dependence from an allowable base claim. These claims are also allowable  
3 for their own recited features that, in combination with those recited in Claim 1,  
4 are not shown and not disclosed in references of record, either singly or in  
5 combination with one another.

6       **Claim 16** recites a processor-readable media comprising processor-  
7 executable instructions for:

- 8       • sending test data from a server to a client, **wherein the test data**  
9       **comprises a first portion of an image sent at a first rate, and a**  
10       **second portion of the image sent at a second rate;**
- 11       • **varying an amount of the test data sent to balance reliability and**  
12       **cost;**
- 13       • receiving test data, sent by the server, at clients located on a  
14       network;
- 15       • calculating a value for  $R_i$  based at least in part on a rate at which the  
16       test data was received by each client;
- 17       • **dividing the clients into at least two groups**, comprising first and  
18       second groups of clients, **wherein the first group of clients was**  
19       **able to receive data faster than the second group of clients based**  
20       **on the  $R_i$  values; and**
- 21       • **opening first and second multicast sessions with the first and**  
22       **second groups, respectively, wherein a transmission rate  $R_0$  of**  
23       **the first session is higher than a transmission rate  $R_0$  of the**  
24       **second session.**

25       Claim 16 recites, “varying an amount of the test data sent to balance  
reliability and cost”. Accordingly, the Applicant respectfully submits that Claim  
16 is allowable for at least the reasons that Claim 1 is allowable, and incorporates  
those arguments, seen above, by reference at this location.

Claim 16 recites, “wherein the test data comprises a first portion of an  
image sent at a first rate, and a second portion of the image sent at a second rate”.  
This aspect, originally seen in Claim 5, as been incorporated into Claim 16. The

1 Patent Office rejected Claim 5, citing column 12 line 51 to column 13 line 5. The  
2 Applicant will therefore address this rejection at this time.

3 Sudo discloses changing transmission speeds, such as from the faster “ER  
4 average” to the slower “ER minimum” (see column 12, lines 53—57). However,  
5 the Applicant has recited that *test data* is sent at two speeds, not regular data. The  
6 Applicant submits that this is significant, in that it is a method of probing the  
7 network to see what transmission rate is appropriate. Moreover, the recited  
8 language combines with the applicant’s recitation of forming two groups, setting  
9 two rates, and transmitting the data to the two groups of clients in two multicast  
10 sessions. Thus, the transmission of data at first and second rates is novel in  
11 combination with other claim elements, as will be seen.

12 Claim 16 recites, “dividing the clients into at least two groups ... wherein  
13 the first group of clients was able to receive data faster than the second group of  
14 clients based on the  $R_i$  values”. This aspect, originally seen in Claim 11, as been  
15 incorporated into Claim 16. The Patent Office rejected Claim 11, citing column  
16 12 line 49 to column 13 line 5. The Applicant will therefore address this rejection  
17 at this time.

18 Sudo discloses transmission from transmitter 1 to clients 2 through 4. (See  
19 column 12, lines 60—68.) However, dividing the clients into two groups (one for  
20 faster transmission and one for slower transmission) is not disclosed. Sudo  
21 discloses that clients 2, 3 and 4 are configured to receive the multicast. However,  
22 Sudo does not disclose that two groups are formed.

23 The Patent Office suggests that column 12 line 49 to column 13 line 5  
24 (cited in the rejection of Claim 11) discloses breaking the clients into two groups.  
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1 The Applicant respectfully disagrees. Referring to the cited passage, it is not  
2 apparent what groups the Patent Office suggests are disclosed. Sudo discloses that  
3 “a plurality” of receiving terminals could receive the multicast signal (column 12,  
4 lines 51—53). However, no actual grouping is disclosed.

5 Claim 16 recites, “opening first and second multicast sessions with the first  
6 and second groups, respectively, wherein a transmission rate  $R_0$  of the first session  
7 is higher than a transmission rate  $R_0$  of the second session”. This aspect, which is  
8 similar to elements originally seen in Claims 11—13, has been incorporated into  
9 Claim 16. The Patent Office rejected Claims 11—13, citing column 12 line 49 to  
10 column 13 line 5 and column 8 lines 32—42. The Applicant will therefore  
11 address this rejection at this time.

12 The passage in column 8 discloses that the transmitter 1 controls the  
13 transmission rate, which is based on the ER value, which may be 10, 15 or 20  
14 Mbps (in the example of lines 32—42). However, this does not disclose first and  
15 second multicast sessions, based on the two groups, using two different  
16 transmission rates, which were set by transmitting test data at two speeds to test  
17 the R values (rates) of the different clients.

18 Similarly, as seen in the above discussion, column 12 line 49 to column 13  
19 line 5 also fails to disclose the recited elements.

20 Accordingly, the Applicant respectfully submits that Claim 16 contains a  
21 number of elements not disclosed by the Sudo reference. The Applicant  
22 respectfully requests that the Section 102 rejection be removed.

23 **Claims 17—27** depend from Claim 16 and are allowable due to their  
24 dependence from an allowable base claim. These claims are also allowable for  
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1 their own recited features that, in combination with those recited in Claim 16, are  
2 not disclosed by reference of record.

3 **Claims 28 and 42** recite many elements that are similar to those discussed  
4 with respect to Claims 1 and 16. Accordingly, these claims are allowable for at  
5 least the same reasons that Claims 1 and 16 are allowable.

6 **Claims 29—41 and 43—49** depend from Claims 28 and 42 and are  
7 allowable due to their dependence from an allowable base claim. These claims are  
8 also allowable for their own recited features that, in combination with those  
9 recited in Claims 28 and 42, are not disclosed by reference of record.

10 **Claim cancellations**

11 In the interests of promoting prosecution of this application, the Applicant  
12 has cancelled a number of claims. This is not to be construed as a reflection of the  
13 Applicant's opinion on the allowability of any of the subject matter contained in  
14 these claims. Rather, the cancellations reflect the need to limit the Applicant's  
15 burden in further prosecuting this case.

16 **Conclusion**

17 The Applicant submits that all of the claims are in condition for allowance  
18 and respectfully requests that a Notice of Allowability be issued. If the Office's  
19 next anticipated action is not the issuance of a Notice of Allowability, the  
20 Applicant respectfully requests that the undersigned attorney be contacted for the  
21 purpose of scheduling an interview.

22 Respectfully Submitted,  
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Dated: 19 Feb 2008

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